In The

Supreme Court of The United States

October Term, 1958

No. 584

LOUISE LASSITER, APPELLANT,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS

Appeal From The Supreme Court of The State Of North Carolina

BRIEF OF APPELLEE

I. BEVERLY LAKE
1008 Capital Club Building
Raleigh, North Carolina
Counsel for Appellee

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JURISDICTION

The appellee agrees with the appellant that this Court has jurisdiction to hear this appeal under the provisions of 28 U. S. C. 1257 (2). The District Court's retention of jurisdiction over the action brought by the appellant against the registrar (Lassiter v. Taylor, Registrar, 152 F. Supp. 295) did not deprive the state courts of jurisdiction over this new proceeding under the state statute against the defendant board. In this proceeding the appellant has, from its inception, attacked the validity of the state statute on the ground that it violates the Constitution of North Carolin and also on the ground that it violates the Constitution of the United States.

The Supreme Court of North Carolina had jurisdiction to decide, was obliged in this proceeding to decide, and did decide both of these questions presented to it by the appellant, and

sustained the statute against both of the attacks launched by the appellant. Its decision on the validity of the statute under the Constitution of North Carolina is conclusive and is not subject to review by this Court, but its decision as to its validity under the Constitution of the United States is subject to review by this Court in this proceeding. The appellee board submits that the decision of the Supreme Court of North Carolina on the federal questions raised by the appellant was correct and should be now affirmed by this Court.

The final judgment of the Supreme Court of North Carolina in this proceeding was entered April 21, 1958. (R. 34). The appellant filed her notice of appeal to this Court July 2, 1958 (R. 35). This Court noted probable jurisdiction December 15, 1958. (R. 39).

STATUTE INVOLVED

This appeal does not involve any part of the Constitution of North Carolina. It involves no statute except Section 163-28 of the General Statutes of North Carolina, which is set forth at page 124 of the 1957 Cumulative Supplement to Volume 3C of the General Statutes of North Carolina, and which reads as follows:

> "§ 163-28. *Voter must be able to read and write; registrar to administer section.*—Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section."

STATEMENT OF THE CASE

Prior to the institution of this proceeding, this appellant Louise Lassiter, brought an action in the United States District Court for the Eastern District of North Carolina, not against the present defendant, the Board of Elections, but against the registrar of the precinct where she desires to register and vote. The purpose of that action was to enjoin the registrar from denying registration to this appellant and

to declare unconstitutional and void Article VI, Section 4, of the Constitution of North Carolina and Section 163-28 of the General Statutes of North Carolina.

The statute, as then written, like the section of the Constitution, after providing that an applicant for registration as a voter must be able to read and write any section of the Constitution in the English language, contained a "Grandfather Clause" of the type held unconstitutional by this Court in Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914). The statute, as then written, required the applicant to show such ability "to the satisfaction of the registrar."

That action was heard by a Three-Judge District Court April 19, 1957, and decided June 10, 1957. Lassiter v. Taylor, Registrar, 152 F. Supp. 295, (E. D. N. C., 1957). After it was instituted but before it was heard, the General Assembly of North Carolina enacted a new Section 163-28 of the General Statutes of North Carolina, which is the statute involved in the present proceeding. This Act was duly ratified April 12, 1957. (Appendix A hereto). As the District Court said in its opinion, the effect was:

> "To repeal the old statute containing the so-called 'grandfather clause' and requiring that ability to read and write be shown to the satisfaction of the registrar and to substitute therefor a statute prescribing a literacy test without any 'grandfather clause' and without any reference to 'satisfaction of the registrar' and providing an appeal from the action of the registrar, from denial of registration to the county board of elections and thence to the Superior Court of the County."

In its opinion in the action which the appellant had brought against the registrar, the Three-Judge Court said:

> "At the hearing, *it was shown, without contradiction, that the literacy test was applied by the registrar to white persons and Negroes alike without discrimination;* and the cross examination of the three Negro women who were denied registration by the registrar amply establish-

ed adequate basis for the denial if the literacy test is valid. The contention of counsel for plaintiffs on the record made at the hearing, as we understand it, is not that the literacy test was discriminatingly applied against their clients, but that it is inherently void." (Emphasis added).

The Three-Judge Court then held: (1) No question remains as to the former statute which has been repealed; (2) Article VI, Section 4, of the Constitution of North Carolina was void when enacted; and (3) the Three-Judge Court would take no action with respect to the present statute until it had been interpreted by the Supreme Court of North Carolina and the administrative remedies provided in the present statute were exhausted.

Twelve days later, June 22, 1957, the appellant applied to the precinct registrar for registration as a voter *"for and in a special election scheduled to be held on July 13, 1957, for the voting citizens of Northampton County."* (R. 7, paragraph 6. Emphasis added). The registrar thereupon handed her a printed copy of the Constitution of North Carolina and requested her to read certain sections of it. (R. 7, paragraph 8). The appellant "declined and refused to read the proffered sections of the said Constitution, *or any other section thereof*", and for this reason alone the registrar refused to register her as a voter in the special election. (R. 8, paragraphs 9 and 10). (Emphasis added).

Pursuant to the statute, the appellant appealed from the registrar to the defendant Board of Elections which heard her appeal *de novo*. At that hearing, the board supplied her with a printed copy of the Constitution of North Carolina and requested her to read certain designated sections of it. Upon her refusal to read "the proffered sections of said Constitution, *or any other section thereof*", (Emphasis added) the defendant Board of Elections ordered that she be denied registration. (R. 8 and 9, paragraphs 11 to 16).

The appellant then appealed to the Superior Court of Northampton County, as the statute permitted her to do. There she

waived her statutory right to trial *de novo* by jury (R. 6) and consented that her alleged right be heard and determined by the Court upon an agreed statement of the facts which is set forth in the record. (R. 6 to 10). Among these stipulations are the following:

> "19. That the said Louise Lassiter, *because of her lack of educational qualifications*, on June 22, 1957, and continuously since said date until the present date, *is unable to and has failed and refused to write or read*, or attempt to write or read, *any section* of the Constitution of North Carolina or any section of the Constitution of the United States in the English language. (Emphasis added).
>
> "20. That aside from her failure, refusal and inability to read or write any section or sections of the Constitution of North Carolina, or any section or sections of the Constitution of the United States in the English language, the said Louise Lassiter meets the other statutory qualifications for eligibility to be registered as a voter in Seaboard Precinct, Northampton County, North Carolina." (R. 9).

Upon the facts so agreed and stipulated, the Superior Court of Northampton County entered its judgment that the appellant is not entitled to be registered as a voter. (R. 12).

From the judgment of the Superior Court the appellant appealed, as she was entitled to do by the statute, to the Supreme Court of North Carolina, where she was duly heard upon all questions of law raised by her in her assignments of error and her statement of her case on appeal. (R. 15 to 19). The Supreme Court of North Carolina affirmed the judgment of the Superior Court of Northampton County for the reasons set forth in its opinion (R. 19 to 33), holding: (1) On April 12, 1957, when the present statute was ratified, there was nothing in the Constitution of North Carolina which prevented the General Assembly of the State from enacting such a statute, and, therefore, so far as the law of the State is concerned, it is a valid statute; and (2) the provisions of the statute apply alike to all who present themselves for registration to vote, so there is no conflict between Section 163-28 of the General

Statutes and the Fourteenth, Fifteenth or Seventeenth Amendments to the Constitution of the United States.

SUMMARY OF ARGUMENT

I. The only statute involved in this appeal is Section 163-28 of the General Statutes of North Carolina. Section 163-32, to which the appellant refers in her brief at page 10, was repealed by the Act of April 12, 1957. (Appendix A hereto).

II. The "Grandfather Clause" contained in Article VI, Section 4, of the Constitution of North Carolina, is void, being in conflict with the Fifteenth Amendment. Lassiter v. Taylor, 152 F. Supp. 295 (E. D. N. C., 1957); Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914). By reason of the provision of Section 5 of Article VI, the Article (Appendix B hereto) is an indivisible whole. Thus, the entire Article is void. Consequently, there is now no provision in the Constitution of North Carolina concerning suffrage.

The adoption of the amendment to Article VI by the people of North Carolina in 1945 could not, of course, validate the "Grandfather Clause" in Section 4, but the Supreme Court of North Carolina has held that it did free the General Assembly to adopt Section 163-28 of the General Statutes of North Carolina in 1957. It did so by doing away with any basis for supposing that the invalidity of Article VI, as readopted by the Amendment of 1945, would have the effect of restoring the provisions of Article VI as that article appeared in the Constitution of 1868, as amended in 1875. Louise Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958). The decision of the Supreme Court of North Carolina as to this effect of the Amendment of 1945 is conclusive.

III. The literacy test imposed by the statute of North Carolina as a qualification for registration as a voter does not conflict with the Fourteenth Amendment. It does not deprive the appellant of liberty without due process of law. It is a reasonable test, having a reasonable relation to the legitimate

public interest of protecting the people of the State from bad government. It provides a definite, uniform standard since it requires every applicant to be able to read and write any section of the Constitution of North Carolina. It does not require any applicant to understand or explain any such section. It does not permit the registrar to select from any other source the test material for determining whether an applicant can read and write. Since it does not require that the reading and writing be "to the satisfaction of the registrar", it does not permit the registrar to exercise any arbitrary discretion in holding one applicant eligible and another ineligible for registration.

The requirements of procedural due process are met in that the statute provides for successive appeals from the registrar to the board of elections and from the board to the Superior Court, the applicant being given a *de novo* hearing on each of these appeals. An appeal to the State Supreme Court from the Superior Court is allowed on questions of law. The applicant had a right to a jury trial in the Superior Court, but waived that right and elected to have her eligibility for registration determined by the Judge upon the agreed statement of facts set forth in the record. (R. 6-10).

The appellant stipulates that she cannot read and write the section of the Constitution of North Carolina designated by the registrar, the section designated by the defendant board of elections, or any other section in the Constitution. (R. 9, paragraph 19). In Lassiter v. Taylor, supra, the Three-Judge District Court found that the registrar had adequate basis for denying registration to the appellant if the literacy test is valid, and further found that the literacy test was applied by the registrar to white persons and Negroes alike without discrimination.

For a state to make a classification between literate and illiterate persons and to deny illiterate persons registration as voters, does not deny to such illiterate persons, the equal protection of the laws, the classification being clear and having a reasonable relation to a legitimate public interest designed

to be protected by the Statute. The statute exempts no applicant for registration from the literacy test. The provision of the State Constitution which attempted to do so is void. Everyone must register in order to vote. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52 (1905).

The privilege of suffrage is not one of the privileges or immunities protected by the Fourteenth Amendment to the Constitution of the United States.

IV. The Fifteenth Amendment has no application to this case because the appellant was not denied registration as a voter by reason of her race, color, or previous condition of servitude, but was denied such registration solely because of her inability to pass and her refusal to attempt to pass the literacy test imposed by the statute.

V. The Seventeenth Amendment to the Constitution of the United States does not prevent a state from imposing a literacy test as a condition to the right to register as a voter and has no application to this appeal.

Therefore, the decision of the Supreme Court of North Carolina should be affirmed.

ARGUMENT

I

SECTION 163-28 OF THE GENERAL STATUTES OF NORTH CAROLINA IS THE ONLY STATUTE INVOLVED IN THIS APPEAL.

The appellant, throughout her brief, including her statement therein of the questions presented by her appeal, (Appellant's Brief, pages 11 to 14) undertakes to argue the unconstitutionality of certain alleged statutes of North Carolina which she identifies only as "North Carolina General Statutes 163-28 *et seq*".

Never, prior to the filing of her brief, has the appellant raised before the registrar, the defendant board, the Superior Court, or the Supreme Court of North Carolina, the slightest question of any statute of North Carolina except General Statutes 163-28. (See, R. 3, 5, 10, 11, 12, 13, 14, 15, 16, 17, 23, 24, 25 and 33). The Supreme Court of North Carolina was not asked to pass upon the validity or the meaning of any other statute of the state, and did not. (Opinion of the Supreme Court of North Carolina, R. 19 to 33).

The appellant cannot in her brief on appeal to this Court inject, for the first time, other statutes, even if such statutes be in existence. Certainly, she cannot rely upon the alleged unconstitutionality of a statute which was repealed before she made the application for registration out of which this appeal arises.

On page 10 of her brief, the appellant asserts that Section 163-32 of the General Statutes of North Carolina "is still a part of the statutory law of North Carolina". Apparently, this is one of the sections she intends to include in her sweeping, broadside "163-28 et seq." If there were no other objection to her present attempt to inject this old statute into this appeal, the sufficient answer is that there is no such statute and has not been since April 12, 1957, a date prior to the appellant's at-

tempt to register as a voter. Prior to that date there was such a statute enacted in 1901, as a companion to the old Section 163-28, which contained a "Grandfather Clause". This Section 163-32 provided for registration, prior to December 1, 1908, of voters claiming to be entitled to registration under the "Grandfather Clause" of the Constitution as amended in 1902, and the old Section 163-28, but, like that section, Section 163-32 was repealed by the Act of April 12, 1957, and, contrary to the appellant's assertion in her brief, is not now "a part of the statutory law of North Carolina."

The Act of April 12, 1957, (Appendix A hereto) provides:

> "Section 1. Article 6, Chapter 163 of the General Statutes, is hereby amended by rewriting G. S. 163-28, to read as follows:
>
> 'Every person presenting himself for registration shall be able to read and write any Section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this Section.'
>
> (Sections 2, 3 and 4 then provide the procedure for successive appeals from the registrar to the board, from the board to the Superior Court, and from that court to the Supreme Court of North Carolina, the procedures followed in this instance by the appellant.)
>
> "Section 5. All laws and clauses of laws in conflict with this Act are hereby repealed." (Session Laws of North Carolina, Regular Session 1957, Chapter 287, p. 277).

As the Three-Judge Court said in this appellant's suit against the registrar (R. 17), the former Section 163-28 "with its 'grandfather clause' . . . has been superseded by the Act of March 29, 1957 (ratified April 12, 1957), which contains neither of these provisions."

In the opinion from which this appeal is taken, the Supreme Court of North Carolina recognizes the invalidity of the old, repealed "Grandfather Clause" through its quotation from

inn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 40 (1914). It then turned to what this Court, in the Guinn se, said "is really a question of State law"; i.e., whether e literacy test was intended to remain in the law with the valid "Grandfather Clause" eliminated. It then said (R. 33):

> *"In this respect* (i.e., without a Grandfather Clause), the statute (the old Section 163-28, containing such a clause on its face) was the subject of judicial interpretation by this Court, in the case of Allison v. Sharp, 209 N. C. 477, 184 S. E. 27, decided 26 February, 1936. And the Court, in opinion by Clarkson, J., held it to be constitutional." (Emphasis added).

That is; the Supreme Court of North Carolina, in the opinion om which this appeal is taken, has said that for over twenty ears, it has recognized the invalidity of the Grandfather lause, which, of course, carried with it into oblivion the echanics provided in 1901 for registration pursuant to it. ven if this were not so, the provisions of Section 163-32, hich the appellant's brief now, for the first time, seeks to ject into this case, certainly were eliminated by the ratifiation of the present statute on April 12, 1957.

Therefore, the only statute of North Carolina involved in his appeal is the present Section 163-28 of the General Statutes, above quoted.

II

ARTICLE VI, SECTION 4, OF THE CONSTITUTION OF NORTH CAROLINA HAS NO BEARING UPON THIS APPEAL.

As the Three-Judge District Court said in Lassiter v. Taylor, 152 F. Supp. 295 (E.D.N.C., 1957), Article VI, Section 4, of the Constitution of North Carolina is void, being violative of the provisions of the Fifteenth Amendment to the Constitution of the United States. However, as the Supreme Court of North Carolina has held in the opinion from which this appeal is taken, (R. 32) the nullity of Article VI, Section 4, does not

impair the validity of Section 163-28 of the General Statutes since the General Assembly has power to enact any legislation as to which there is no constitutional prohibition. Whether there was on April 12, 1957, any provision in the Constitution of North Carolina which deprived the General Assembly of the power to enact the present Section 163-28 of the General Statutes is, of course, a question of state law on which the decision of the Supreme Court of North Carolina is conclusive. Moreover, the history of Article VI of the Constitution of the State, on which its conclusion was reached, shows the conclusion to be sound:

Prior to July 1, 1902, the Constitution of North Carolina provided certain qualifications for voting, but these did not include a literacy test. (Constitution of 1868, as amended by the Constitutional Convention of 1875, Article VI, Section 1). An Amendment, to be effective July 1, 1902, if approved by the voters, was submitted to the vote of the people of the State by an Act of the General Assembly (Chapter 2 of the Adjourned Session of 1900), which Act provided:

> "That Article Six of the Constitution of North Carolina be and the same is hereby abrogated, and in lieu thereof shall be substituted the following Article of said Constitution, as an entire and indivisible plan of suffrage."

The Act then set forth a wholly new Article VI, (quoted in full, R. 27-28) which provided in Section 4, "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language." This provision was followed in the same section by the "Grandfather Clause". The amendment, which was approved by the vote of the people, then provided in Section 5, "That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and to make them so dependent upon each other, that the whole shall stand or fall together."

The "Grandfather Clause" being invalid under the subsequent decision of this Court in Guinn v. United States, 238

U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914), and the new Article VI expressly providing that it was one indivisible plan and the whole of it should stand or fall together, the whole new Article VI fell, but in its fall, it did not cause the former provision of the Constitution of 1868, as amended in 1875, to rise to new life.

This amendment of 1902 did two things: (1) it "abrogated" Article VI of the Constitution of 1868, as amended in 1875; (2) It put into the Constitution a new Article VI. These two were separate and distinct. That which was "entire and indivisible" was the new Article VI. It being indivisible and the "Grandfather Clause" being in conflict with the Fifteenth Amendment, the entire new Article VI fell. The old Article VI having been "abrogated" by the proper amending procedure—submission to the vote of the people by the General Assembly, and approval by the vote of the people—the Constitution of North Carolina simply contained no valid Article VI after July 1, 1902.

This being true, the Constitution of North Carolina was, in effect, silent on the subject of qualifications of voters. Consequently, the North Carolina rule that the General Assembly is without power to add to the qualifications imposed by the Constitution of the State (State v. Scarboro, 110 N. C. 232, 14 S. E. 737 (1892) has no application.

The new Article VI, so approved by the vote of the people, was, of course, printed in and as part of all subsequent printings of the Constitution of North Carolina. Even after the decision in Guinn v. United States, supra, it is quite clear that North Carolina did not regard the old Article VI of the Constitution of 1875 as having any effect. It was recognized as dead. This is clearly shown by the adoption in 1920, pursuant to the proper amending procedures, of an amendment to eliminate the payment of poll tax as a qualification for voting, a qualification not in the Article VI of 1868 and 1875. (Opinion of the Supreme Court of North Carolina, R. 29). The new Article VI was further amended in 1945 and again in 1954.

The 1945 Amendment changed Article VI, Section 1, to read as follows:

> "Every person born in the United States, and every person who has been naturalized, twenty-one years of age, *and possessing the qualifications set out in this Article*, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided." (Emphasis added).

The Act submitting it to the vote of the people expressly repealed all laws and clauses of laws in conflict with its provisions. (R. 30).

With the above mentioned changes, Article VI as it now appears in the Constitution of North Carolina, (Appendix B hereto) reads as it read following the Amendment of 1902, including the literacy test and the "Grandfather Clause" exception thereto, and also including Section 5, which still provides:

> "That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and make them so dependent upon each other, that the whole shall stand or fall together."

In the opinion from which this appeal is taken, the Supreme Court of North Carolina (R. 32) held that the adoption of the 1945 Amendment had the effect of "incorporating and adopting anew the provisions as to the qualifications required of a voter as set out in Article VI, freed of the indivisibility clause of the 1902 Amendment."

By so holding, the Supreme Court of North Carolina was not saying, as the appellant contends in her brief, that the voters of North Carolina in 1945 made valid the Grandfather Clause of Article VI, Section 4. That they could not do in view of the Fifteenth Amendment. What the Court has now said is that even if the appellee board is not correct in its position, above stated, that the 1902 Amendment "abrogated" the old Article VI which appeared in the Constitution of 1868, as

amended in 1875, the 1945 Amendment did so abrogate it. (R. 31, 32) for in 1945, the State clearly proceeded on the basis that the old Article VI of 1868 and 1875 was already dead. There is nothing in the Act of the General Assembly submitting the 1945 Amendment, or in the vote of the people approving it, making the validity of the present Article VI a condition precedent to the abrogation of the Article VI of 1868 and 1875.

Whether the abrogation of a former provision of a state's Constitution is or is not contingent upon the validity of a new provision which the people of the state have sought to put in its place, is clearly a matter of the law of that state and is not a federal question. On that question, the decision of the Supreme Court of North Carolina is final and is not subject to review by this Court.

Elmendorf v. Taylor, 10 Wheat. 152, 159, 6 L. Ed. 289 (1825);

Green v. Neal's Lessee, 6 Pet. 291, 298, 8 L. Ed. 402 (1832);

State Railroad Tax Cases, 92 U. S. 575, 618, 23 L. Ed. 663 (1875);

Pelton v. Bank, 101 U. S. 143, 25 L. Ed. 901 (1879);

Moores v. Bank, 104 U. S. 625, 26 L. Ed. 870 (1881);

New Orleans Waterworks Co. v. Louisiana Sugar Refining Co., 125 U. S. 18, 8 S. Ct. 741, 31 L. Ed. 607 (1888);

In re Kemmler, 136 U. S. 436, 447, 10 S. Ct. 930, 34 L. Ed. 519 (1889);

Stutsman Co. v. Wallace, 142 U. S. 293, 12 S. Ct. 227, 35 L. Ed. 1018 (1892);

McPherson v. Blacker, 146 U. S. 1, 23, 13 S. Ct. 3, 36 L. Ed. 869 (1892);

Bauserman v. Blunt, 147 U. S. 647, 13 S. Ct. 466, 37 L. Ed. 316 (1892);

Minnesota ex rel. Pearson v. Probate Court of Ramsey County, 309 U. S. 270, 60 S. Ct. 525, 84 L. Ed. 744, 126 A. L. R. 530 (1940);

Wilson v. Cook, 327 U. S. 474, 485, 66 S. Ct. 663, 90 L. Ed. 793 (1946).

This Article VI, as so readopted in 1945, contains in Section 4 precisely the same literacy test prescribed by Section 163-28 of the General Statutes, but, unlike the statute, Article VI, Section 4, also contains a "Grandfather Clause" which is in conflict with the Fifteenth Amendment to the Constitution of the United States. Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914).

The Supreme Court of North Carolina has said of this readopted Article (R. 32):

> "The 1945 amendment so proposed and later adopted had the effect of incorporating and adopting anew the provisions as to the qualifications required of a voter as set out in Article VI, freed of the indivisibility clause of the 1902 amendment. And the way was made clear for the General Assembly to act."

If the Court meant by this language that, by reason of the Amendment of 1945, Section 5 of Article VI no longer applies and the various provisions of Article VI, itself, are separable and independent of each other, then the invalidity of the "Grandfather Clause" does not impair the remainder of Article VI, and there is now in the Constitution of North Carolina an Article VI imposing precisely the same literacy test as that imposed by Section 163-28 of the General Statutes. As this Court said in Guinn v. United States, supra, this is a question of state law which this Court will consider only in absence of a decision by the Supreme Court of the State.

If by this sentence the Supreme Court of North Carolina

meant only that the 1945 Amendment freed the abrogation of the Article VI of the Constitution of 1868, as amended in 1875, from any connection with the validity of the new Article VI, then the present Article VI is, within itself, an indivisible whole and the invalidity of the "Grandfather Clause" invalidates the entire Article VI. If this view be taken of the decision of the North Carolina Court, there is at this time no provision at all in the North Carolina Constitution concerning suffrage. In this situation the General Assembly of 1957 was free to adopt Section 163-28 of the General Statutes, containing the present literacy test with no "Grandfather Clause".

In either view of its opinion, the Supreme Court of North Carolina was correct in saying, "The way was made clear for the General Assembly to act." (R. 32). On this, its decision is final. The only question for decision on this appeal is as to the validity of the provision of Section 163-28 of the General Statutes under the Fourteenth, Fifteenth and Seventeenth Amendments to the Constitution of the United States.

III

THE NORTH CAROLINA STATUTE DOES NOT CONFLICT WITH THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(a) *Section 2 of the Amendment.*

The appellant's statement of the questions presented by her appeal, both in the record (R.p. 37, 38) and in her brief indicate that she does not rely upon Section 2 of Amendment XIV. In any event, this provision of the Amendment, even as supplemented by Amendment XIX, does not confer upon the appellant the right to be registered as a voter.

McPherson v. Blacker, 146 U. S. 1, 39, 13 S. Ct. 3, 36 L. E. 869 (1892).

The Fourteenth Amendment did not confer the right of suffrage, nor did it forbid the states to qualify, limit or with-

hold such right. So long as such qualification, limitation or withholding does not violate the Due Process Clause or the Equal Protection Clause, the Fourteenth Amendment is not concerned with it.

Minor v. Happerstett, 88 U. S. 162, 22 L. Ed. 627 (1874);

Breedlove v. Suttles, 302 U. S. 277, 59 S. Ct. 872, 82 L. Ed. 1281 (1937);

See also, Trudeau v. Barnes, 65 F. (2d) 563, cert. den., 290 U. S. 659, 54 S. Ct. 74, 78 L. Ed. 571 (5th Circuit, 1933);

Davis v. Schnell, 81 F. Supp. 872, aff'd, 336 U. S. 933, 69 S. Ct. 749, 93 L. Ed. 1093 (S. D. Ala., 1949).

(b) *The Due Process Clause,*

The North Carolina statute clearly does not deprive the appellant of procedural due process of law.

In her brief, the appellant takes the strange position that the North Carolina statutory procedure is arbitrary because it gives the applicant for registration the right to successive appeals from the registrar to the board of elections, from the board to the Superior Court of her county, and from the Superior Court to the Supreme Court of the State. (Sections 163-28.1, 163-28.2, and 163-28.3 of the General Statutes of North Carolina, Appendix A hereto).

These statutory provisions are obviously designed to protect the applicant against any possibility of arbitrary denial of registration. Considered as a whole, they give the applicant three independent opportunities to establish her eligibility for registration, the hearings before the board and before the Superior Court being *de novo*. Thus, she is protected by the statute against any possibility of arbitrariness on the part of the registrar, or even the defendant board, in her or its decision as to the applicant's ability to read and write. This is a procedural implementation of the removal by the Legislature

from the statute of the former provision that the reading and writing be "to the satisfaction of the registrar."

The appellant's contention in her brief that the statute is arbitrary because it gives her the right to a trial by jury in the Superior Court is, indeed, novel. Probably this is the first time that it has ever been contended that to give a litigant the right to trial by jury is a denial of due process of law. A sufficient answer in this case, in any event, is that the appellant was permitted in the Superior Court to waive her right to trial by jury and to have her right determined by the Court upon her own agreed stipulation as to the facts. (R. 6). Furthermore, the guaranty of a trial by jury in such a case was said by the Circuit Court of the Fifth Circuit to be an assurance that the applicant was protected against arbitrary rejection, the Court saying:

> "The Louisiana Constitution protects every citizen who desires to register from being arbitrarily denied that right by the registrar of voters by the giving the applicant a right to apply without delay and without expense to himself to the trial court, to submit his qualifications to vote to a jury, and to have them finally passed upon by an appellate court. It is idle to say that the defendant as registrar had the arbitrary power to deny the plaintiff the right to vote."

Trudeau v. Barnes, 65 F. (2d) 563, cert. den., 290 U. S. 659, 54 S. Ct. 74, 78 L. Ed. 571 (5th Circuit, 1933).

It is not a denial of substantive due process of law for a state to limit the suffrage to those who can read and write. In Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914), this Court said:

> "No time need be spent on the question of the validity of the literacy test considered alone, since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed its validity is admitted."

In Trudeau v. Barnes, supra, the Court sustained the pro-

vision of the Louisiana Constitution requiring an applicant for registration to be able "to read any clause in this Constitution, or the Constitution of the United States and give a reasonable interpretation thereof." The Circuit Court said: "It is difficult to conceive how this clause can be said to violate either the Fourteenth or Fifteenth Amendment." This Court denied certiorari.

In Davis v. Schnell, 81 F. Supp. 872, (S. D. Ala., 1949), a Three-Judge District Court said: "The States have a right to prescribe a literacy test for electors." It further stated that the original Constitution of Alabama had provided "definite standards for passing upon the qualifications of prospective electors." By that original provision, an applicant was required to be able to "read and write any article of the Constitution of the United States in the English language." Thus the test there said to be definite, and within the power of the state to prescribe, was exactly the same as the test prescribed by the North Carolina statute here under discussion, except it is the State Constitution which is the source of the material to be read and written in North Carolina.

The Court in Davis v. Schnell, supra, then held that the amended Alabama test prescribed by the Boswell Amendment, fell before the Fourteenth Amendment because that new test required the applicant to "understand and explain" as well as "read and write", any article of the Constitution of the United States. This added requirement, the Court said, subjected the applicant to the possibility of arbitrary denial by the registrar since the words "understand and explain" as applied to a constitutional provision do not furnish a definite standard. The North Carolina statute here attacked by the appellant does not require the applicant for registration to understand or explain anything. It merely requires her to read and write.

The North Carolina statute does not leave the registrar, or on appeal the board or the Superior Court, free to roam at large in the selection of the material which the applicant is to read and write. The material must be selected from some

section of the North Carolina Constitution. If a literacy test is to be something more than a farce, the examiner must be allowed some selection of the words to be read. Otherwise, the purpose of the test could be evaded. Limiting the examiner to a selection of some section of the North Carolina Constitution enables the examiner to determine whether the applicant can read and write as distinguished from the applicant's ability to memorize a predetermined short passage. At the same time, it protects the applicant from the possibility of being required to read from a publication using terms of great difficulty, while another applicant is permitted to register upon reading from a book of children's nursery rhymes. The North Carolina statute, therefore, requires that all applicants be required to read and write test material taken from a source sufficiently extensive to provide a real test and at the same time of such relative uniformity of language that one applicant cannot be given a test more difficult than that imposed upon another. It would be difficult to find a more definite standard than that prescribed by the North Carolina statute in its designation of the source of the test material.

The North Carolina statute does not subject the applicant to the personal whim of the registrar since there is no requirement that the material be read to "the satisfaction of the registrar", or that the applicant explain the test material. It, therefore, does not impose a test of the type held invalid in Davis v. Schneli, supra, but falls within the class of literacy tests said by that case to be within the power of the state.

In Franklin v. Harper, 205 Ga. 779, 55 S. E. (2d) 221 (1949), the Court held a state requirement that an applicant for registration be able to "read intelligibly" a specified paragraph of the Constitution of Georgia does not deprive the applicant of liberty without due process of law in violation of the Fourteenth Amendment. An appeal to this Court was dismissed.

Franklin v. Harper, 339 U. S. 946, 70 S. Ct. 804, 94 L. Ed. 1361 (1949).

If the privilege of voting is a liberty, within the meaning of

the Due Process Clause, it is not every denial of that liberty which is beyond state power. The denial is not forbidden if the public welfare affords a reasonable basis for it. It is sufficient that reasonable men might conclude that the protection of the public against bad government outweighs the denial to the individual of the right to vote.

Thus, while the Due Process Clause protects the liberties of all persons, the right to vote is everywhere limited to citizens. It is limited to citizens of a certain age, because of the danger to the public in permitting children to participate in the choice of public officers or in fixing public policies. Until the adoption of the Nineteenth Amendment, women could be denied the right to vote notwithstanding the Fourteenth Amendment. Minor v. Happerstett, supra. Notwithstanding the Due Process Clause of the Fifth Amendment and the provisions of the First Amendment, this Court sustained a law of Idaho Territory denying the right to vote to members of the Mormon Church because that Church then taught and encouraged polygamy. Davis v. Beeson, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637 (1890). The right to vote can be, and usually is, denied one who has been convicted of a felony or other serious crime, the reason being that to permit such a person to participate in the choice of public officials or in the determination of public policy would endanger the public interest in good government to a degree which outweighs the deprivation to the individual.

Surely, the inability of a would be voter to read and write the English language has a relation to the protection of the public against bad government sufficient to outweigh the illiterate individual's interest in being able to vote. That being true, the denial to such a person of the right to vote, even if that be a "liberty" is not a denial without due process of law.

(c) *The Equal Protection Clause.*

The classification made by the North Carolina statute is clear and definite. It is a classification between the literate and the illiterate. It is this classification which the appellant

asserts is a violation of the Equal Protection Clause of the Fourteenth Amendment. (See, Question (b), Appellant's Brief, p. 13).

In Barbier v. Connolly, 113 U. S. 27, 32, 5 S. Ct. 357, 28 L. Ed. 923 (1885), this Court said:

> "Legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

The North Carolina statute applies to all applicants for registration. It grants no exemptions. It has a reasonable relation to the protection of the public against bad government.

Even before the decision in Guinn v. United States, supra, when the "Grandfather Clause" was regarded as part of the State Constitution, the Supreme Court of North Carolina, held that persons who met the terms of that clause must register in order to vote and must reregister from time to time, as new registrations might be required, the permanency being not a permanency of registration but a permanency, so long as the "Grandfather Clause" was effective, of exemption from the literacy test. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52 (1905). Now that the invalidity of the "Grandfather Clause" is established by this Court's decision in Guinn v. United States, supra, the exemption from the literacy test is gone and every person who desires to vote in North Carolina must register, which he can do only if he passes the literacy test.

That there is no basis for the application of the rule of Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886), through any defect in the administration of the statute by the defendant, or its registrar, is shown in the following language of the Three-Judge District Court in this appellant's own action against the registrar:

> "At the hearing, it was shown, without contradiction, that the literacy test was applied by the Registrar to white persons and Negroes alike without discrimination;

> and the cross examination of the three Negro women who were denied registration by the Registrar amply established adequate basis for the denial if the literacy test is valid. The contention of counsel for plaintiffs on the record made at the hearing, as we understand it, is not that the literacy test was discriminatingly applied against their clients, but that it is inherently void."
>
> Lassiter, et al. v. Taylor, Registrar, 152 F. Supp. 295 (E. D. N. C., 1957).

In United States v. Reese, 92 U. S. 214, 23 L. Ed. 563 (1875), this Court recognized that the Fourteenth Amendment does not deprive the states of the power to exclude citizens of the United States from voting on the basis of their lack of education.

In Trudeau v. Barnes, supra, a literacy test more stringent that that in the North Carolina statute, since it required the applicant to give a reasonable interpretation of a clause in the Constitution of Louisiana, was held valid, the Circuit Court saying:

> "It is at once apparent that the clause of the State Constitution which is under attack applies to all voters alike, denies to none of them the equal protection of the laws. . . . It is difficult to conceive how this clause can be said to violate either the Fourteenth or Fifteenth Amendment. It lays down but one test, that of intelligence, which applies uniformly and without discrimination to voters of every race and color."

This Court denied certiorari. Trudeau v. Barnes, 290 U. S. 659, 54 S. Ct. 74, 78 L. Ed. 571 (1933).

In Davis v. Schnell, 81 F. Supp. 872 (S. D. Ala., 1949), the provision in the Alabama Constitution which was held to be a violation of the Equal Protection Clause, was not the requirement that an applicant be able to read and write. The Court expressly said, "The States have a right to prescribe a literacy test for electors." The defect there was in the requirement that the applicant "understand and explain" the

constitutional provision selected by the registrar. This requirement was thought so vague as to arm the registrar with arbitrary power to deny some applicants, while registering others no better qualified, thus bringing the Alabama law within the condemnation of the rule of Yick Wo v. Hopkins, supra. This Court affirmed the decision of the District Court. Davis v. Schnell, 336 U. S. 933, 69 S. Ct. 749, 93 L. Ed. 1093 (1949).

In the opinion from which this appeal is taken, the Supreme Court of North Carolina said:

> "The provisions of G. S. 163-28 apply alike to all persons who present themselves for registration to vote. There is no discrimination in favor of, or against, any by reason of race, creed or color." (R. 33).

The appellant has been properly classified by the defendant. She has stipulated (R. 9) that she "because of her lack of educational qualifications . . . is unable to . . . write or read . . . any section of the Constitution of North Carolina, or any section of the Constitution of the United States in the English language." She has further stipulated that this was the ground upon which both the registrar and the defendant board refused to register her. (R. 8. 9).

(d) *The Privileges and Immunities Clause.*

It has been repeatedly held by this Court and by the lower federal courts that the Fourteenth Amendment did not confer upon anyone the right to vote and that the privilege of voting is not one of the privileges and immunities of citizens of the United States.

Minor v. Happerstett, 88 U. S. 162, 22 L. Ed. 627 (1874);

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563 (1875);

United States v. Cruikshank, 92 U. S. 542, 23 L. Ed. 888 (1875);

Pope v. Williams, 193 U. S. 621, 24 S. Ct. 573, 48 L. Ed. 817 (1903);

Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914);

Breedlove v. Suttles, 302 U. S. 277, 59 S. Ct. 872, 82 L. Ed. 1281 (1937);

Trudeau v. Barnes, 65 F. (2d) 563, cert. den., 290 U. S. 659, 54 S. Ct. 74, 78 L. Ed. 571 (1933);

Pirtle v. Brown, 188 F. (2d) 218, cert. den., 314 U. S. 621, 62 S. Ct. 64, 86 L. Ed. 499 (1941);

Davis v. Schnell, 81 F. Supp. 872, aff'd, 336 U. S. 933, 69 S. Ct. 749, 93 L. Ed. 1093 (1949);

Davis v. Teague, 220 Ala. 309, 125 So. 51 appeal dismissed, 281 U. S. 695, 50 S. Ct. 248, 74 L. Ed. 1123 (1929);

Franklin v. Harper, 205 Ga. 779, 55 S. E. (2d) 221, appeal dismissed, 339 U. S. 946, 70 S. Ct. 804, 94 L. Ed. 1361 (1949);

Tedesco v. Board of Supervisors of Elections for Parish of Orleans, 43 So. (2d) 514 (La.), appeal dismissed, 339 U. S. 940, 70 S. Ct. 797, 94 L. Ed. 1357 (1949).

As this Court pointed out in Minor v. Happerstett, supra, the adoption of the Fifteenth Amendment, itself, shows this to be true, for if suffrage were a privilege or immunity derived from United States citizenship and protected from state abridgement by the Fourteenth Amendment, there would have been no necessity for a further amendment forbidding the states to deny or abridge the right to vote on account of race, color, or previous condition of servitude.

The privilege or immunity conferred upon the appellant by the Fourteenth Amendment is not the privilege to vote, but the privilege not to be deprived without due process of law, or in contravention of the Equal Protection Clause, of a right to vote otherwise established under state law. The Fifteenth Amendment added the privilege not to be denied

he right to vote on account of race, color or previous condition f servitude, but it went no further than that. The Nineteenth mendment added the privilege not to be denied the right o vote on account of sex, but it went no further than that. hus, the Fourteenth Amendment leaves to the states the ower to impose any qualification upon the right to vote ther than sex, race, color, previous condition of servitude, or qualification which, having no reasonable relation to the rotection of the public from bad government, deprives the laintiff of a liberty without due process of law, or places her n a classification which is arbitrarily made. Since the imposi- ion of a reasonable literacy test does none of these things, he North Carolina statute does not deprive the plaintiff of ny privilege or immunity guaranteed by the Fourteenth Amendment.

IV

THE NORTH CAROLINA STATUTE DOES NOT VIOLATE THE FIFTEENTH AMENDMENT.

The statute makes no reference to race, color or previous condition of servitude. In this appellant's suit against the registrar, the District Court found that the literacy test is applied by the registrar to white persons and Negroes alike, without discrimination.

Lassiter v. Taylor, Registrar, 152 F. Supp. 295 (E. D. N. C., 1957).

The statute contains no exceptions or exemptions from the literacy test. The act by which it was adopted (Appendix A hereto) repealed all laws and clauses of laws in conflict with it. The Grandfather Clause written into Article VI, Section 4 of the Constitution of North Carolina, in 1902, and readopted by reference by the amendment of 1945, as stated by the Supreme Court of North Carolina in the opinion from which this appeal is taken, was and is void and of no effect. There is no law of North Carolina which denies any person the right to register on account of race, color, or previous condition of servitude. There is no law of North Carolina which grants any

person the privilege of registration as a voter without compliance with the same literacy test required of this appellant.

In United States v. Reese, 92 U. S. 214, 23 L. Ed. 563 (1875) this Court said, "The Fifteenth Amendment does not confer the right of suffrage upon anyone."

In Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914), this Court said:

> "Beyond doubt, the Amendment (the Fifteenth) does not take away from the State governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of state and national authority under the constitution and organization of both governments rest would be without support and both the authority of the nation and the state would fall to the ground. In fact, the very command of the Amendment recognizes the possession of the general power by the State, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals."

Since there has been no denial of the plaintiff's application to register because of her race, color, or previous condition of servitude, there has been no violation of the Fifteenth Amendment either in the adoption of this statute or in the administration of it by the defendant board or its registrar.

V

THE NORTH CAROLINA STATUTE DOES NOT VIOLATE THE SEVENTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The Seventeenth Amendment provides:

> "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

The remainder of the Amendment simply relates to the filling of vacancies and to the continuation of the term of any senator chosen before the Amendment became effective.

Obviously, the words "elected by the people thereof" were simply a substitute for the words "chosen by the legislature thereof" found in Article I, Section 3. Clearly, it was not intended by these words to confer upon all people the right to vote for senators regardless of citizenship, age, previous criminal record, payment of poll tax, educational qualifications, or any other of the various qualifications theretofore imposed by their states and recognized as valid by this court.

In passing, it may be noted that the election for which the appellant sought to be registered was not an election at which a United States Senator was to be chosen but was "a special election scheduled to be held on July 13, 1957, for the voting citizens of Northampton County." (R. 7, Stipulation 6).

CONCLUSION

Since Section 163-28 of the General Statutes of North Carolina imposes as a condition precedent to registration as a voter, the valid, nondiscriminatory and reasonable literacy test, which test the District Court for the Eastern District of North Carolina has found to be applied without discrimination to white and Negro people alike; since it is stipulated by the appellant that she cannot pass such test and does not have the qualification for registration specified by the statute; and since the statute applies alike to all applicants for registration, the appellant has not been deprived of any right; privilege or immunity arising under or conferred upon her by the Constitution of the United States. The decision of the Supreme Court of North Carolina should, therefore, be affirmed.

Respectfully submitted,

I. BEVERLY LAKE,

Counsel for the Appellee

APPENDIX — A

ACT OF APRIL 12, 1957

CHAPTER 287

AN ACT TO AMEND ARTICLE 6, CHAPTER 163, OF THE GENERAL STATUTES RELATING TO REGISTRATION OF VOTERS.

THE GENERAL ASSEMBLY OF NORTH CAROLINA DO ENACT:

Section 1. Article 6, Chapter 163 of the General Statutes, is hereby amended by rewriting G. S. 163-28, to read as follows:

"Every person presenting himself for registration shall be able to read and write any Section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this Section."

Sec. 2. Article 6, Chapter 163 of the General Statutes, is further amended by inserting a new Section, G. S. 163-28.1, to read as follows:

"Any person who is denied registration for any reason may appeal the decision of the registrar to the county board of elections of the county in which the precinct is located. Notice of appeal shall be filed with the registrar who denied registration, on the day of denial or by 5:00 P.M. on the day following the day of denial. The notice of appeal shall be in writing, signed by the appealing party, and shall set forth the name, age, and address of the appealing party, and shall state the reasons for appeal."

Sec. 3. Article 6, Chapter 163 of the General Statutes, is further amended by inserting a new Section, G. S. 163-28.2, to read as follows:

"Every registrar receiving a notice of appeal shall promptly file such notice with the county board of elec-

tions, and every person appealing to the county board of elections shall be entitled to a prompt and fair hearing on the question of such person's right and qualifications to register as a voter. A majority of the county board of elections shall be a quorum for the purpose of hearing appeals on the question of registration, and the decision of a majority of the members of the board shall be the decision of the board. All cases on appeal to a county board of elections shall be heard de novo, and the board is authorized to subpoena witnesses and to compel their attendance and testimony under oath, and is further authorized to subpoena papers and documents relevant to any matter pending before the board. If at the hearing the board shall find that the person appealing from the decision of the registrar is able to read and write any Section of the Constitution of North Carolina in the English language and if the board further finds that such person meets all other requirements of law for registration as a voter in the precinct to which application was made, the board shall enter an order directing that such person be registered as a voter in the precinct from which the appeal was taken. The county board of elections shall not be authorized to order registration in any precinct other than the one from which an appeal has been taken. Each appealing party shall be notified of the board's decision in his case not later than ten (10) days after the hearing before the board."

Sec. 4. Article 6, Chapter 163 of the General Statutes, is further amended by inserting a new Section, G. S. 163-28.3, to read as follows:

"Any person aggrieved by a final order of a county board of elections may at any time within ten days from the date of such order appeal therefrom to the Superior Court of the County in which the board is located. Upon such appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the Superior Court in the same manner as other civil actions are tried and disposed of therein. If the decision of the court be that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that such person is entitled to be registered as a qualified voter in the precinct to which application was originally made, and in such case the name of such person shall be entered on the registration books of

that precinct. The court shall not be authorized to order the registration of any person in a precinct to which application was not made prior to the proceeding in court. From the judgment of the Superior Court an appeal may be taken to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions."

Sec. 5. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 6. This Act shall be effective upon its ratification.

In the General Assembly read three times and ratified, this the 12th day of April, 1957.

APPENDIX — B

CONSTITUTION OF NORTH CAROLINA

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.* Every person born in the United States, and every person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided. (The 19th amendment to the United States Constitution, ratified Aug. 6, 1920, provided that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex." North Carolina accordingly by c. 18, Extra Session 1920, provided for the registration and voting of women.)

Sec. 2 *Qualifications of voter.* Any person who shall have resided in the State of North Carolina for one year, and in the precinct, ward or other election district in which such person offers to vote for thirty days next preceding an election, and possessing the other qualifications set out in this Article, shall be entitled to vote at any election held in this State; provided, that removal from one precinct, ward or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which such person has removed until thirty days after such removal. No person who has been convicted, or who has confessed his guilt in open court upon indictment, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's Prison, shall be permitted to vote unless the said person shall be first restored to citizenship in the manner prescribed by law.

Sec. 3. *Voters to be registered.* Every person offering to vote shall be at the time a legally registered voter as herein pre-

scribed and in the manner hereafter provided by law, and the General Assembly of North Carolina shall enact general registration laws to carry into effect the provisions of this article.

Sec. 4. *Qualification for registration.* Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: *Provided*, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration; and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section 2 of this article.

Sec. 5. *Indivisible plan; legislative intent.* That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and make them so dependent upon each other, that the whole shall stand or fall together.

Sec. 6. *Elections by people and General Assembly.* All elections by the people shall be by ballot, and all elections by the General Assembly shall be *viva voce*.

Sec. 7. *Eligibility to office; official oath.* Every voter in North Carolina except as in this article disqualified, shall be eligible to office, but before entering upon the duties of the office, he shall take and subscribe the following oath:

I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as ..... So help me, God."

Sec. 8. *Disqualification for office*: The following classes of persons shall be disqualified for office: *first*, all persons who shall deny the being of Almighty God. *Second*, all persons who shall have been convicted or confessed their guilt on indictment pending, and whether sentenced or not, or under judgment suspended, of any treason or felony, or of any other crime for which the punishment may be imprisonment in the penitentiary, since becoming citizens of the United States, or of corruption or malpractice in office, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.

Sec. 9. *When this chapter operative*. That this amendment to the Constitution shall go into effect on the first day of July, nineteen hundred and two, if a majority of votes cast at the next general election shall be cast in favor of this suffrage amendment.